

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-N-17479-DFM
)	
CHARLES REGINALD WEAR,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 102381,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this proceeding, respondent Charles Reginald Wear (Respondent) was charged with willfully violating California Rules of Court, rule 9.20, by failing to file a declaration of compliance with that rule in conformity with the requirements of rule 9.20(c) as required by an order of the Supreme Court. Respondent failed to participate either in person or through counsel, and his default was entered. Thereafter, the Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges

¹ Unless otherwise indicated, all references to rules or Rules of Procedure of the State Bar are to the Rules of Procedure of the State Bar that were in effect from January 1, 2011, through June 30, 2014. A number of the rules of procedure, including the rules governing defaults, were amended effective July 1, 2014. Nonetheless, because Respondent's default was entered before July 1, 2014, the operative rules in this matter are those that were in effect before July 1, 2014.

(NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on February 5, 1982, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On April 11, 2014, the State Bar filed and properly served the NDC on Respondent at his membership-records address by certified mail, return receipt requested. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Thereafter, the State Bar received a return receipt for the NDC that was served on Respondent, and it appears to have been signed by Respondent.

Thereafter, on June 2, 2014, the assigned Deputy Trial Counsel (DTC) sent an email, with a copy of the NDC attached to it, to Respondent at Respondent's membership records email address. That email advised Respondent that his response to the NDC was overdue and that the State Bar would seek his default if he did not file a response by June 4, 2014. Later that same day, the DTC iterated that information directly to Respondent when the DTC called Respondent and spoke with him on the telephone.

Respondent failed to file a response to the NDC. On June 5, 2014, the State Bar filed and properly served a motion for entry of default on Respondent at his membership records address by certified mail, return receipt requested. The motion complied with all the requirements for a

² If the court determines that any due process requirements is not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

default, including a supporting declaration of reasonable diligence from the DTC declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion for default also notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.

Respondent did not file a response to the motion or the NDC, and his default was entered on June 25, 2014. The order entering Respondent's default was properly served on Respondent at his membership records address by certified mail, return receipt requested. On July 1, 2014, the State Bar Court received the return receipt for the default order, and it was signed by Respondent. The default order notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The court also ordered that Respondent be involuntarily enrolled as an inactive member of the State Bar of California in accordance with Business and Professions Code section 6007, subdivision (e). Respondent's inactive enrollment under that order became effective three days after the order was served and has continued since that time.

Respondent did not seek to have his default vacated or set aside. (Rule 5.83(B); rule 5.83(C)(1) [attorney has 180 days to file a motion to set aside default].) On February 9, 2015, the State Bar filed and properly served a petition for disbarment after default on Respondent at his membership records address by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent had failed to contact the State Bar since the default was entered on June 25, 2014; (2) there is one disciplinary matter pending, which is abated; (3) Respondent has prior records of discipline; and (4) the Client Security Fund has not made any payments due to Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on March 12, 2015.

Prior Records of Discipline

Respondent has three prior records of discipline.³

First, on July 18, 2012, the Supreme Court filed an order in case number S201892 (State Bar Court case number 11-O-15087), placing Respondent on one year's stayed suspension and two years' probation on conditions, but no actual suspension. In that matter, Respondent stipulated to being culpable of three counts of misconduct involving a single client matter: failing to promptly refund unearned fees; failing to promptly refund advanced costs in accordance with the client's request; and failing to cooperate in a State Bar disciplinary investigation.

Second, on August 28, 2013, the Supreme Court filed an order in case number S211554 (State Bar Court case number 12-O-12506), placing Respondent on two years' stayed suspension and three years' probation on conditions including a one-year actual suspension. In that proceeding, Respondent stipulated to being culpable of four counts of misconduct involving a single client matter: failing to competently perform legal services; improperly withdrawing from employment; failing to adequately communicate with the client; and failing to cooperate in a State Bar disciplinary investigation.

Third, on February 27, 2014, the Supreme Court filed an order in State Bar case No. 13-PM-16064, revoking the two-year probation it had imposed on Respondent in 2012 and placing Respondent on one year's stayed suspension and two years' probation on conditions including a one-year actual suspension. That discipline was imposed because Respondent had failed to comply with two of the conditions of his probation.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that

³ The court admits into evidence the certified copies of Respondent's three prior records of discipline that are attached to the State Bar's February 9, 2015, petition for disbarment.

Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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Count One - Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned, or suspended attorneys), by not filing a rule 9.20(c) compliance declaration with the Clerk of the State Bar Court no later than November 6, 2013, in accordance with the Supreme Court's August 28, 2013, order in case number S211554 [State Bar Court case number 11-O-19119]).

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent and Respondent was, in fact, notified of the proceedings prior to the entry of his default;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that Respondent **Charles Reginald Wear**, State Bar number 102381, be disbarred from the practice of law in the State of California and that his name be

stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Charles Reginald Wear**, State Bar number 102381, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rule 5.111(D).)

Dated: May ___, 2015.

DONALD F. MILES
Judge of the State Bar Court